

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GRANT STREET GROUP, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 9-1407
)	
REALAUCTIONS.COM, LLC,)	
)	
Defendant.)	

AMBROSE, Senior District Judge

ORDER OF COURT

The parties have filed excessively extensive Objections to deposition designations, counter designations and trial exhibits. (ECF Nos. 454-456, 463). Based on my review of the same, I find as follows:

1. Unless otherwise noted below, all objections based on form, foundation, argumentative, speculation, confusion, repetition, compound, duplicative, incomplete document, vagueness/ambiguousness, no predicate for refreshing recollection, or assuming facts not in evidence are denied without prejudice as premature as these can be cured at trial.
2. Unless otherwise noted below, all objections based on “prejudice” or “fairness” are denied. The standard requires that the moving party show the evidence should be excluded because its probative value is “substantially outweighed by a danger of....unfair prejudice.” F.R.E 403. Unfair prejudice means an undue tendency to suggest decision on an improper basis. The sum total of the movant’s argument is the word “prejudicial” or “fairness” and thus, the movant has failed to provide any grounds for meaningful assessment of the objection.
3. Unless otherwise noted below, all objections based on relevance are denied, without prejudice, as premature.
4. Unless otherwise noted below, all objections as to exhibits that a party suggests that it “may offer” but is not sure it will offer are denied, without prejudice, as premature.

5. Unless otherwise noted below, all objections as to mischaracterizations based on prior testimony or improper characterization of exhibit are denied as parties may counter designate.
6. Unless otherwise noted below, for rulings on all objections based on a Motion *in Limine*, please refer to the ruling on that Motion *in Limine* for the ruling on the objection.
7. As to the remainder of the objections, I rule as follows:

Grant Street Group's Objections to Deposition Designation (ECF No. 454)		
<u>Witness</u>	<u>Objection / Pages</u>	<u>Ruling</u>
David Dering, Robert O'Neill, Jeffery Harris, Daniel J. Veres,	General Objection to unavailability	Denied, see FRCP 32(a)(3) and FRE 801(d)(2)(D)
Robert O'Neill Robert Panoff	All Objections as to Grant Street's Motion <i>in Limine</i> #6 re: Inequitable Conduct	Granted to the extent said testimony relates the Motion <i>in Limine</i> #6, which was granted on September 25, 2012 prohibiting certain testimony, argument, suggestions or evidence relating to inequitable conduct
Danie Veres	98:16-18 (legal conclusion) 99: 5-7 (legal conclusion)	As to legal conclusion, granted.
James Griffith	General Objection based on reasons set forth in Grant Street's Motion <i>in Limine</i> #1 re: testimony and Evidence regarding eBay	Denied, see Order denying Motion <i>in Limine</i> #1.
	Hearsay Objections	Denied, see Order denying Motion <i>in Limine</i> #1.
Ian Yorty	83-84 94: 9-10 94:15-95:9	Designations withdrawn
Donald O'Neill	All Objections relating to Motion <i>in Limine</i> re: Issue Preclusion	Granted in part and denied in part as is consistent with my ruling on Motion <i>in Limine</i> regarding issue preclusion at ECF No. 483

Grant Street's Objections to Defendant's Trial Exhibits (ECF No. 455)

Ex. No.	Objection	Ruling
D16	Hearsay, as to cover letter	Denied for reason stated
D38	Hearsay	Denied without prejudice to be reasserted at time of trial if and when the exhibit is used. The objection and response are so cryptic that the court is unable to make a ruling at this time as to whether the statements fall under FRE 801(d)(2) and/or 803(6).
D39	Hearsay	Denied without prejudice to be reasserted at time of trial if and when the exhibit is used. The objection and response are so cryptic that the court is unable to make a ruling at this time as to whether the statements fall under FRE 801(d)(2) and/or 803(6).
D45	Hearsay, as to email from J. Taylor	Granted to the extent J. Taylor will not be testifying at trial.
D52	Hearsay	Denied based on FRE 803(17)
D62	Hearsay	Denied based on FRE 803(6)
D90	Hearsay	Denied, not offered for truth but offered for limited purpose of showing the communication took place
D95	Hearsay	Denied based on FRE 803(18)
D96	Hearsay	Denied based on 803(6). Additionally, not offered for truth just date
D97	Hearsay	Denied based on 803(6), not offered for truth but rather to show date
D98	Hearsay	Denied based on 803(6)
D99	Hearsay	Denied based on 803(6)
D100	Hearsay	Denied based on 803(6)
D101	Hearsay	Denied based on 803(6)
D102	Hearsay	Denied based on 803(6)
D113	Hearsay	Denied based on 803(6). Additionally, not offered for truth.
D114	Hearsay	Denied based on 803(6). Additionally, not offered for truth.
D115	Hearsay	Denied based on 803(6). Additionally, not offered for truth.
D116	Hearsay	Denied based on 803(6). Additionally, not offered for truth.
D117	Hearsay	Denied based on 803(6). Additionally, not offered for truth.
D158	Hearsay	Denied based on 803(6).
D159	Hearsay	Denied based on 803(6).
D160	Hearsay	Denied based on 803(6).
D161	Hearsay	Denied based on 803(6).
D162	Hearsay	Denied based on 803(6).
D165	Hearsay	Denied

D166	Hearsay	Denied
D173	Hearsay	Denied without prejudice
D189	Hearsay	Denied based on 803(6)
D190	Hearsay	Denied based on 803(6)
D191	Hearsay	Denied based on 803(6)
D200	Hearsay	Denied based on 803(18)
D204	Hearsay (video)	Denied without prejudice
D230	Hearsay	Denied
D241	Hearsay	Denied
D260	Hearsay	Denied
D263	Hearsay	Denied

Realauctions's Objections to Deposition Designation (ECF No. 456-1)		
<u>Witness</u>	<u>Objection Pages</u>	<u>Ruling</u>
David Epner	19:17-20:23 (hearsay) 45:18-46:7 (legal conclusion) 46:10-17 (legal conclusion) 46:18-19; 22-25 – 47:1-4) (legal conclusion) 65:9-66:9 (hearsay) 80:14-81:1 (legal conclusion)	Granted; witness can rephrase Denied Denied Granted Denied Denied
Kenneth Dale Farmer, Jr.	59:20-23 (hearsay) 126:17-26 140:2-3 (hearsay) 140:15-18 (misstates content) 141:19-22 (hearsay)	Denied; doesn't match with a statement or a question calling for hearsay Designations withdrawn Denied Denied Denied
Alexander Lizano	5:23-7:9 (delay) 8:5-21 (delay) 94:13-96:19 (fairness)	Denied Denied Denied
Doug McClendon	37:14-38:16 (hearsay) 89:12-91:12 (hearsay) 107:6-108:8 (legal conclusion) 108:20-109:5 (legal conclusion)	Denied Denied Denied Denied
Craig McIntyre	54:15-55:16 (legal conclusion) 55:25-57:11 (legal conclusion) 57:14-20 (legal conclusion) 57:23-58:18 (legal conclusion) 65:7-66:13 (legal conclusion) 66:16-67:18 (legal conclusion) 67:22-68:3 (legal conclusion) 71:3-73:5 (hearsay) 73:22-74:13 (hearsay) 82:12-25 (hearsay) 83:3-84:7 (hearsay) 84:10-23 (hearsay) 100:3-13 (hearsay) 117:8-23 (legal conclusion)	Denied Denied Denied Denied Denied Denied Denied Denied Denied Denied Denied Denied
Eric Benson	100:8-19 (legal conclusion) 129:11-16 (hearsay)	Denied Denied
Ronald E. Rubin	11:11-12, 14 (hearsay) 13:18-15:11 (hearsay) 49:19-52:15 (hearsay)	Denied Denied Denied

	175:2-4 (hearsay)	Denied
	175:7-13 (hearsay)	Denied
	176:16-182:6 (hearsay)	Denied
	182:9-184:1 (hearsay)	Denied
	184:4-189:4 (hearsay)	Denied
	189:7-192:21 (hearsay)	Denied
	194:7-196:23 (hearsay)	Denied
	197:1-198:4 (hearsay)	Denied
	205:4-206:10 (hearsay)	Denied
	206:13-24 (hearsay)	Denied
	230:15-232:1 (hearsay)	Denied

Realauctions's Objections to Grant Street's Exhibit List (ECF No. 456-2)	
Ex. No.	<u>Ruling on Hearsay Objections</u>
3	Denied
4	Denied
5	Denied without prejudice
24	Denied
25	Denied
27	Denied
30	Denied
31	Denied
32	Denied
35	Denied
36	Denied
37	Denied
38	Denied
39	Denied
40	Denied
41	Denied
46	Denied
48	Denied
49	Denied, without prejudice
54	Denied, without prejudice
58	Denied, without prejudice
61	Denied
62	Denied
64	Granted except pages or excerpts that are actually statements of an opposing party. Objection as to those pages or excerpts are denied.
65	Denied
66	Denied
71	Denied
73	Denied without prejudice
76	Denied
78	Granted
93	Denied without prejudice
95	Denied
97	Denied
115	Denied without prejudice
117	Denied
118	Denied
121	Denied
128	Denied
143	Granted
168	Granted
173	Granted
174	Granted
175	Granted

Realauctions's Objections to Counter Deposition Designation (ECF No. 463)¹

Witness	Hearsay Objections	Ruling
David Dering	35:13-36:5 71:22-73:3	Granted Granted
Robert O'Neill	20:22-22:10	Granted as to 21:16-22:2; Denied as to all other portions
David Landes 7/27/11	57:8-60:13 62:15-69:12 69:15-72:20	Denied Denied Denied
David Landes 11/15/02	81:9-82:1	Denied
David Landes 10/2/06	35:6-41:7 42:1-49:25	Denied Denied
Jeffery Harris	121:20-121:25	Granted
Robert Panoff	63:8-67-18	Denied

BY THE COURT:

s/ Donetta W. Ambrose
Donetta W. Ambrose
United States Senior District Judge

Date: December 28, 2012

¹Just as a note: Grant Street did not respond to Realauction.com's Objections to Plaintiff's Counter-Designations.